

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of) PP Docket No. 93-253
)
TELEPHONE ELECTRONICS CORPORATION) File No.
)
Emergency Petition for Waiver)
of Section 24.709(a)(1) of the)
Commission's Rules,)
47 C.F.R. § 24.709(a)(1))

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: Commercial Wireless Division
Wireless Telecommunications Bureau

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JOINT COMMENTS OF GULF TELEPHONE COMPANY,
HOPPER TELECOMMUNICATIONS COMPANY, INC.,
MILLRY TELEPHONE COMPANY, INC.,
MOUNDVILLE TELEPHONE COMPANY, INC.,
PINEBELT TELEPHONE COMPANY, INC., AND
RAGLAND TELEPHONE COMPANY, INC.

1. Gulf Telephone Company, Hopper Telecommunications Company, Inc., Millry Telephone Company, Inc., Moundville Telephone Company, Inc., Pinebelt Telephone Company, Inc., and Ragland Telephone Company, Inc. ("Joint Commenters"),^{1/} by counsel, and pursuant to the FCC's Public Notice, DA 95-651 (March 29, 1995), hereby submit their comments on the Emergency Petition for Waiver filed by Telephone Electronics Corporation ("TEC") on March 28, 1995.

^{1/} Joint Commenters are all rural telephone companies. Each of the Joint Commenters is also a female-owned and controlled small business, except for Millry Telephone Company, Inc., which, through affiliates, has agreed to invest in an applicant in which the control group will qualify as a female-owned small business.

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2. As discussed below, Joint Commenters support the grant of TEC's request for rule waiver as a compromise leading to the settlement of litigation, thus serving the public interest by allowing the Commission to promptly resume the auctioning of broadband Personal Communications Services ("PCS") spectrum. However, Joint Commenters request that the Commission grant TEC's waiver request narrowly, by clarifying that it applies only to TEC and similarly situated rural telephone companies, and to the extent that only non-LEC telephone company revenues affiliated with that entity be excluded for the purposes of assessing auction eligibility. Finally, Joint Commenters agree that TEC and similarly situated rural telephone companies should be able to take advantage of installment payment plans to the extent they qualify for them as small businesses; however, the Commission should maintain enhanced installment payment plans for minority and female owned businesses.

3. Joint Commenters are small rural local exchange carriers which had been planning to participate in the broadband PCS entrepreneurs' block auctions with the benefit of the small business and female preferences accorded them by Congress^{2/} and the FCC.^{3/} These auctions were to have begun on May 30, 1995 (i.e., 75 days after the Block A/B auction ended on March 13,

^{2/} See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 312, 387 (1993), codified at 47 U.S.C. § 309(j).

^{3/} 47 C.F.R. §§ 24.709-.720. See Implementation of Section 309(j) of the Communications Act: Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532 (1994), recon., Fifth Memorandum Opinion and Order, 10 FCC Rcd 403 (1994).

1995).^{4/} However, the U.S. Court of Appeals, D.C. Circuit, granted TEC's request to stay the auction,^{5/} pending resolution of the issues raised in TEC's Petition for Review challenging the Commission's rules and procedures governing eligibility to bid in the PCS entrepreneurs' block auctions.^{6/} With oral argument in TEC v. FCC scheduled for September 12, 1995,^{7/} it is unlikely that entrepreneurs' block auctions will proceed until early 1996, at the earliest, unless the case is settled. The resultant delay in the entrepreneurs' block auction will irreparably damage Joint Commenters and all those who planned to bid, due to the competitive disadvantages they will face as incumbent wireless operators become more entrenched. Furthermore, the uncertainty arising from the litigation strikes a blow to these entrepreneurs' ability to secure adequate financing to effectively bid in the auctions and thereafter build out systems.

^{4/} See Public Notice, FCC Extends Short Form and Auction Dates for 493 BTA Licenses Located in the C Block for Personal Communications Services in the 2 GHz Band (February 10, 1995).

^{5/} Order, TEC v. FCC, Case No. 95-1015 (D.C. Cir. March 15, 1995).

^{6/} TEC v. FCC, Case No. 95-1015 (D.C. Cir. filed January 6, 1995). Among the Joint Commenters, Gulf Telephone Company has already been granted intervenor status in the case, Order, TEC v. FCC, Case No. 95-1015 (March 15, 1995), while Hopper Telecommunications Company, Inc., Millry Telephone Company, Inc., Moundville Telephone Company, Inc., Pinebelt Telephone Company, Inc., and Ragland Telephone Company, Inc. have moved for leave to intervene, and are awaiting grant of their motions.

^{7/} Order, TEC v. FCC, Case No. 95-1015 (D.C. Cir. March 16, 1995).

4. TEC states that if the relief sought in its waiver request is granted, it "would have no incentive to continue with its appeal, and its lawsuit could be dismissed, allowing the auctions to proceed without further delay." Emergency Petition for Waiver at 7. Therefore, Joint Commenters support TEC's waiver request as a token of compromise leading to the settlement of the litigation, thereby lifting the uncertainty now surrounding the broadband PCS auctions, and terminating the delay of the auctions that so contravenes the public interest.^{8/}

5. However, in granting TEC's waiver, Joint Commenters respectfully request that the Commission clarify the narrow extent of the waiver to be granted. TEC claims that it should be eligible to bid in the entrepreneurs' block auction as a rural telephone company despite the fact that the revenues generated by its reseller long distance affiliates puts TEC over the \$125 million revenue threshold for bidding in the entrepreneurs' block under Section 24.709(a)(1) of the Commission's rules.^{9/} In seeking relief from this rule, TEC requests that the Commission

^{8/} See Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

^{9/} 47 C.F.R. § 24.709(a)(1) states:

No application is acceptable for filing and no license shall be granted for frequency block C or frequency block F, unless the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, have gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million at the time the applicant's short-form application (Form 175) is filed.

not include the revenues of a rural telephone company's "non-rural telephone company affiliates" in determining whether a rural telephone company meets the gross revenue cap of \$125 million established in Section 24.709(a)(1). Emergency Petition for Waiver at 1. Joint Commenters are concerned that if TEC's waiver request were granted as phrased, it would also allow the exclusion of a rural telephone company's non-rural LEC affiliates in determining the applicable revenue cap under the rule, in essence, eviscerating the purpose of the entire rule. Therefore, the Commission should clarify that waiver of Section 24.709(a)(1) per TEC's request applies only to rural LECs seeking to exclude non-LEC affiliated revenues in determining the applicable revenue cap under the rule; a rural LEC affiliated with non-rural LECs must include the non-rural LEC's revenues in assessing the applicable revenue cap.

6. In addition, TEC requests that the Commission waive its rules to the extent "necessary to permit TEC's rural telephone companies to pay for any winning bids in ten annual installments, under the same procedures that apply to all other bidders in the entrepreneurs' block auctions." Emergency Petition for Waiver at 7. Once again, TEC's language is broad and obscures the fact that the ten year installment payment plans are different depending on the applicant category. Specifically, small businesses owned by minorities and women qualify for lower interest rates and a longer interest-only pay-out period than

small businesses not owned by minorities and women.^{10/} Joint Commenters assume that, since TEC's waiver request only seeks the small business 10% bidding credit (rather than the 15%-25% bidding credits available to entities owned by minorities and women), it is similarly seeking the small business installment payment plan pursuant to Section 24.711(b)(3) of the Commission's Rules. Nonetheless, the overbreadth of TEC's waiver request compels Joint Commenters to seek clarification that TEC be granted the ability to pay for any winning bid in installments, but only to the extent granted to other small businesses, and that TEC is not entitled to the enhanced installment payment plans granted to businesses owned by minorities and women.

7. Finally, Joint Commenters note that on March 29, 1995 (one day after TEC filed the instant Emergency Petition for Waiver), Consolidated Communications, Inc. ("CCI") moved to intervene in TEC v. FCC to protect its interests if TEC were to withdraw its case. CCI states that it is the corporate parent of a rural telephone company, and, like TEC, is excluded from the entrepreneurs' block auction by the gross revenue requirement of the Commission's affiliation rules. CCI's intervention motions do not contain enough facts to assure that CCI and TEC are indeed

^{10/} Compare, e.g., 47 C.F.R. § 24.711(b)(3) (for small businesses, interest based on the rate for ten-year U.S. Treasury obligations plus 2.5 percent; payments of interest only for first two years with interest and principal amortized over the remaining eight years of the license term) with id. § 24.711(b)(5) (for small businesses owned by members of minority groups and/or women, interest based solely on the rate for ten-year U.S. Treasury obligations; payments of interest only for the first six years with interest and principal amortized over the remaining four years of the license term).

similarly situated (for example, some of CCI's non-rural revenues may derive from non-rural LEC activities). That notwithstanding, if the facts reveal that CCI and TEC are similarly situated entities, then Joint Commenters would support a ruling from the Commission in this proceeding that all similarly situated entities be given comparable treatment as that given TEC in its waiver request, thereby sparing the administrative burden of additional waiver requests, and allowing the PCS auctions to proceed in a most expedient manner.

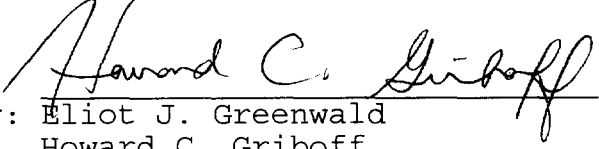
WHEREFORE, for the above stated reasons, Joint Commenters respectfully request the Commission to grant TEC's Emergency Petition for Waiver, with the requested clarifications set forth herein.

Respectfully submitted,

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Dated: April 3, 1995

CERTIFICATE OF SERVICE

I, Renee Gray, a secretary to the law firm of FISHER WAYLAND COOPER LEADER & ZARAGOZA L.L.P., hereby certify that on this 3rd day of April, 1995, I served a true copy of the foregoing "**JOINT COMMENTS**" by first class United States Mail, postage prepaid, upon the following:

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